



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 17, 1997

Mr. Jason C. Marshall
Nichols, Jackson, Dillard, Hager & Smith
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR97-2776

Dear Mr. Marshall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110932.

The City of Coppell (the "city"), which you represent, received a request for information pertaining to:

1. A matter investigated by Coppell Police Department, occurring on August 19, 1997 at 820 South MacArthur where a "threat to kill complaint was made" (city denotes request as No. 3910);
2. All documentation of investigation and prosecution of Ed Caldwell, charged with "false imprisonment" and "retaliation" occurring January 30, 1997 (city denotes request as No. 3845-A);
3. All documentation, not merely first page, of "obscene language in public place" on 500 block of Ruby Road on March 9, 1997 (city denotes request as No. 3908);
4. All documentation, not merely first page, of driving while intoxicated on 1800 block of South Belt Line on April 26 1997 (city denotes request as No. 3909); and
5. All documentation, not merely first page, of disorderly conduct at 120 South Denton Tap on April 27, 1997 (city denotes request as No. 3911).

You indicate that you will disclose some of the documents from those files. You assert that the remainder of the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.108, the "law enforcement exception," provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of [s]ection 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You state that the requested information under number one involving a matter investigated by Coppell Police Department, occurring on August 19, 1997 at 820 South MacArthur where a "threat to kill complaint was made" involves an ongoing investigation under case number 97-038521. You also assert that the documents involving the charge of driving while intoxicated on the 1800 block of South Belt Line on April 26 1997 involves an ongoing prosecution under case number 97-018453 filed by the Dallas County District Attorney's office as per your markings on the relevant documents. Additionally, you submit information which upon examination reveals that the documents pertaining to Ed Caldwell

with regard to the charge of "false imprisonment" and "retaliation" involve what appear to be at least two ongoing cases under F-970051 and F-9700491.¹

As the requested information relates to pending investigations or prosecutions, we find that release of the requested information would interfere with the prosecution of crime under section 552.108(a)(1) and may be withheld. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

In reviewing the documents responsive to the request for the incident involving the use of "obscene language in public place" on the 500 block of Ruby Road on March 9, 1997, we note that the investigation records show that the particular incident did not result in prosecution, and in fact, the documents bear the following note, "CID records show this offense to be cleared by exception, per Sgt. Wingo." We conclude that the responsive documents deal with the detection, investigation of crime that did not result in conviction or deferred adjudication. Accordingly, we conclude that section 552.108(a)(2) is applicable to these documents and they may be withheld. Although we note the foregoing documents are excepted pursuant to section 552.108, "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.3d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Consequently, although section 552.108 authorizes you to withhold the remaining requested information from disclosure, you may choose to release all or part of the foregoing information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Next, we examine the documents responsive to the incident involving disorderly conduct occurring at 120 South Denton Tap on April 27, 1997. You state the case reached final disposition by deferred adjudication. Thus section 552.108(a)(2) is inapplicable. You have not explained how release of the requested information interferes with the detection, investigation or prosecution of crime; therefore you may not withhold it under section 552.108(a)(1).

However, we observe the files contain information excepted by 552.130. The Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

¹We note the presence of what appears to be nonresponsive documents in each of the foregoing files.

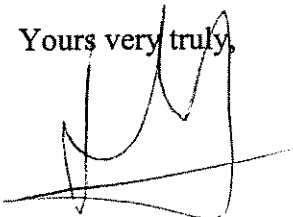
(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

See Act of May 29, 1997, S.B. 1069, § 4, 75th Leg., R.S. (to be codified at Gov't Code § 552.130). Consequently to the extent that the files contain information which comes under the exception of section 552.130, that information must be withheld. The remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. ***This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records.*** If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 110932

Enclosures: Submitted documents

cc: Mr. Doyle Calfey
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(w/o enclosures)